

STATE OF INDIANA ) IN THE HENDRICKS CIRCUIT COURT  
 ) SS:  
COUNTY OF HENDRICKS ) CAUSE NO: 32C01-1108-MI-157

IN THE MATTER OF THE )  
JE-TO LAKE CONSERVANCY DISTRICT )

) Natural Resources Commission  
) Administrative Cause  
) Number: 11-175C

***RECOMMENDED***  
**REPORT OF THE NATURAL RESOURCES COMMISSION  
WITH RESPECT TO THE PETITION FOR THE ESTABLISHMENT  
OF THE JE-TO LAKE CONSERVANCY DISTRICT**

**I. PETITION, SUMMARY OF EVIDENCE RECEIVED AT PUBLIC HEARING**

**A. Petition**

On October 17, 2011, the Natural Resources Commission (the “Commission”) received a copy of the Petition for the Establishment of the Je-To Lake Conservancy District (the “Petition”). A conservancy district may be established for any purpose set forth in Ind. Code §14-33-1-1(a). The Petition lists the purposes for which the conservancy district is proposed as (1) developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management; (2) operation, maintenance, and improvement of works of improvement including, but not limited to Je-To Lake and the Je-To Lake dam and spillway; and (3) improving drainage.

On October 13, 2011, Jeffrey V. Boyles, Judge, Hendricks Circuit Court, entered an order referring the Petition to the Natural Resources Commission, in substantive part, as follows:

ENTRY ORDERING THE PETITION REFERRED TO THE NATURAL RESOURCES COMMISSION

...

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED by this Court as follows:

...

2. The Petition to Establish the Je-To Lake Conservancy District bears the necessary number of signatures of freeholders owning land within the proposed conservancy district, and complies with statutory requirements as to form and content as set for in IC 14-33-1 and particularly in IC 14-33-2-4, and that said Petition be, and the same hereby is, in such respects approved by this Court.

3. The Clerk of this Court shall forthwith forward to the Natural Resources Commission a certified copy of the Petition...
4. The Natural Resources Commission shall make a determination in respect to said Petition in accordance with IC 14-33-2-17, inclusive
5. The Natural Resources Commission shall file a report in this Court in accordance with IC 14-33-2-22 as soon as practicable but in any case within one hundred twenty (120) days of the date of this Entry.

As a consequence of the Court's referral, on November 29, 2011, the Commission circulated letters to state and local governments for comment.

Under the Hendricks Circuit Court Order and Ind. Code § 14-33-2-19, a public hearing was held as scheduled on December 13, 2011, in the Hendricks County Government Building, 355 South Washington Street, Meeting Room 3, Danville, Indiana. Notices of the public hearing were published on November 10, 2011 in the Hendricks County *Republican*, and November 14, 2011 in the Hendricks County *Flyer*, newspapers of general circulation in Hendricks County. A notice of the public hearing was also posted to the Commission's Web-based calendar accessible at <http://www.in.gov/nrc/2307.htm>.

### **B. Summary of Evidence Received at Public Hearing**

Jennifer M. Kane was appointed as the Commission's hearing officer. Kane opened the public hearing as scheduled on December 13, 2011 to receive comment on the proposed Je-To Lake Conservancy District. She outlined the statutory responsibilities of the Commission pertaining to the review of the Petition. Approximately 16 persons were in attendance.

The Hearing Officer called upon the Petitioners' attorney, Alan M. Hux, to present evidence in support of the Petition.

### **Petitioner Supporting Evidence**

Attorney Hux introduced the following exhibits:

**Petitioners' Exhibit A:** Petition for the Establishment of the Je-To Lake Conservancy District filed with the Hendricks Circuit Court, Cause No. 32C01-1108-MI-157.

**Petitioners' Exhibit B:** Banning Engineering, Preliminary Engineering Report for Je-To Lake Dam, State ID 32-4, Hendricks County, Indiana, December 2011.

**Petitioners' Exhibit C:** Affidavit of Mailing [of Notice of the Natural Resources Commission Hearing on the Petition].

Attorney Hux explained that Judge Boyles ordered the Petitioners be noticed of the Commission's public hearing; and subsequently, on November 9, 2011, notice of the Commission's public hearing was forwarded to freeholders in the proposed Je-To Lake Conservancy District<sup>1</sup>. Hux then introduced Mary Dugan, Carolyn Sabean, and Jeff Healy to testify in favor of the Petition. Their testimony is summarized<sup>2</sup> as follows:

Mary Dugan, freeholder and Treasurer of the Je-To Lake Homeowner's Association (the "HOA"), stated that she served on the HOA's Je-To Lake Dam Committee, which convened over the summer 2011. She also stated that the HOA has been involved in the process for establishment of the conservancy district since May 2011. There are 35 freeholders (including the HOA) within the proposed district, with 25 freeholder signatures appearing on the Petition. Dugan stated that it is planned that the HOA would obtain ownership of the Je-To Lake, Je-To Lake dam and spillway in order to repair the dam and spillway.

Dugan explained the current status of the Je-To Lake, Je-To Lake dam and spillway, and drainage issues at the Je-To Lake subdivision. "We've had three known over-topping events, one in 2008, one in 2010, and one in 2011". She said the 2011 event resulted in a visible sinkhole, which exposed the deteriorated dropdown corrugated spillway pipe. "When we drew down the lake—we knew the silt was high—it was really revealed how much silt we do have in there". Dugan said the Department of Natural Resources inspected the Je-To Lake dam and determined the Je-To Lake dam is deficient. She said the proposed conservancy district would repair and maintain Je-To Lake and its dam for beneficial water management. She noted drainage to Je-To Lake would need to be improved to alleviate silt deposits within the lake.

Dugan said the HOA met with Banning Engineering to discuss repairs and maintenance costs associated with Je-To Lake, its dam and spillway, and drainage improvement. She stated that it was necessary to remove sediment from Je-To Lake, and believed the proposed conservancy district is feasible in both economic and engineering terms. She said it is the proposed conservancy district's intention to seek from a Hendricks County financial institution short-term finance of the necessary improvements. Dugan said the intention is for the proposed conservancy district to assess exceptional benefits against the freeholds within the proposed conservancy district to cover the capital costs of the repair projects. The engineering report

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<sup>1</sup> Petitioners' Exhibit C.

<sup>2</sup> Statements made at the December 13, 2011 public hearing that are identified with quotation marks are intended to set off direct quotations. The audio quality of the recording was not always pristine. As a result, the statements should be considered as summaries and not as verbatim.

estimated the total project cost to be \$425,000, and an exceptional benefit assessment for each freehold would be approximately \$12,500.

Dugan stated she believed if the Je-To Lake dam were to be breached and the Je-To Lake drained, the loss in value to each freehold would be in excess of \$15,000. She said the proposed conservancy district would also assess, if necessary, a special benefits tax to supplement any deficiency of the exceptional benefits assessment. Dugan said the proposed conservancy district would also seek long-term financing through a bond issue or through other methods available to finance the remaining capital costs. She believed repairs to the dam and silt removal would develop and preserve a recreational facility in connection with beneficial water management. Dugan stated that the proposed conservancy district would assess special benefit to cover the ongoing maintenance costs associated with Je-to Lake, Je-to Lake dam and spillway, and drainage improvement. She reiterated the need to repair and maintain Je-To Lake, its dam and spillway, and to improve drainage to Je-To Lake.

Dugan said the areas within the proposed conservancy district are contiguous; the conservancy district serves a proper area; and can be established and operated and compatible with established conservancy districts and other water management projects.

Carolyn Sabean, a resident of Plainfield, Indiana, stated that she has been employed as a real estate agent with Carpenter Realtors for 17 years. As a real estate agency, Sabean indicated that she has valued real estate and homes on a daily basis, and has experience in valuing lakeside real estate. “We were residents of Heritage Lake for 16 years, and the majority of my business is still at Heritage Lake”. Sabean indicated that Heritage Lake is served by the Clear Creek Conservancy District, and said she is familiar with the operation of conservancy districts.

Sabean said she is familiar with the freeholder issues at Je-To Lake, and has reviewed real estate assessed values for Je-To Lake. She reviewed the home values and estimated the costs to the homeowners if the dam is not repaired and breached. “If the dam is not repaired and is breached—there’s no water there—I would say the loss to all the homeowners would be in excess of \$500,000”. She noted there was a dam breach at a nearby lake community served by the Indian Boundary Conservancy District. The cost of loss of Je-To Lake would be in excess of costs associated with the repair and maintenance of the lake, dam, and spillway, and drainage improvement. She said the formation of the conservancy district appears to be necessary. “It’s hard enough to sell a home in today’s environment, but if there is no lake, it would be even harder to sell. There would be a great loss”. Sabean agreed the proposed Je-To Lake Conservancy District could be established and operated and compatible with established conservancy districts and other water management projects.

Jeffrey W. Healy, P.E., Vice President of Banning Engineering, a business located at 853 Columbia Road, Suite 101, Plainfield, Indiana, said he has completed post-secondary schooling in groundwater hydrology. In the past 34 years, he has worked on conservation projects and natural resource projects, both for the Natural Resources Conservation Service and for the last 16 years in private practice, “a very large part of that has to do with dams and levees of the nature of Je-To Lake”. He said Je-To Lake HOA retained Banning Engineering. Banning Engineering reviewed and inspected the Je-To Lake, dam and spillway and prepared a Preliminary

Engineering Report<sup>3</sup> (the “Engineering Report”), which contains two alternatives for dam repair and rehabilitation. Healy said Banning Engineering evaluated two alternatives and the “myriads that are out there, but two that would have a reasonable chance of success”. He said recommended is Alternative #1, with a total cost (including costs associated with construction, geotechnical, engineering for inspection and oversight) of approximately \$241,000 in construction costs, with a total project cost of \$300,000.

Healy said the Engineering Report evaluated the: (1) contributing drainage area to Je-To Lake; and (2) existing dam as it relates to the water that flows to Je-To Lake during a storm period. “We compared the results to the requirements that the State of Indiana has with respect to both significant and high hazard dams. We made an approximate review of the hazard classification of the existing dam, and prepared a rehabilitation plan to safely pass what we believe to be the required design storm based on the State’s guidelines and the State rules, and something that can be permitted and reasonably constructed”. Healy described the deficiencies of Je-To Lake and its dam and spillway. He said the sediment deposit in Je-To Lake is a supplemental problem, which reduces flood storage when floodwaters are in the upstream area. He said the upstream watershed is approximately 800 acres. Healy said the Engineering Report shows that there are three or four houses located downstream of the Je-To Lake dam that are potentially at risk in the event the dam was breached.

Healy said improving drainage along the residential roads would have a positive impact by decreasing the silt runoff from the road and being deposited into Je-To Lake. He stated that the proposed conservancy district appears to be necessary for the purposes stated in the Petition and holds promise of economic and engineering feasibility. When asked whether Healy believed the testimony given by Sabeau was reasonable that an excess of \$500,000 economic impact would result of the loss of Je-To Lake, Healy answered, “I’m not a real estate agent or an evaluator, but in my experience the loss is significant with a loss of a recreation component”. He said the estimated economic loss exceeds the total costs for repair and maintenance of Je-To Lake, dam, and spillway. He stated that the proposed conservancy district covers a proper area, and can be established and operated in a manner compatible with other established conservancy districts and other water management projects.

### **Comments Received**

Linda McCafferty, freeholder, said she owns a nonlake front residence within Je-To Lake residential development. She questioned whether the establishment of the conservancy district would change the status of Je-To Lake from a private lake to a public lake.

Majorie Rondinella, freeholder, said she owns a nonlake front residence within Je-To Lake residential development. “Our dam did breach years ago, and we lost the water. I don’t remember getting any kind of backlash from that at all.” Rondinella stated that her residence has been for sale for six month, and “it didn’t sell. I have gotten zero feedback that the lake had anything to do with it. I am interviewing realtors again, and none of them have told me that the loss of the water and the dam is affecting the cost of my home. But I am losing probably

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<sup>3</sup> Petitioners’ Exhibit B.

\$43,000 to \$44,000 from when [my residence] was originally assessed four years ago when I tried to sell it.... The realtors come up with a composite of the homes in the area that are for sale or have sold. As far as I know, nothing has been said to me about the dam, whether we have it....” Rondinella said costs for the repair and maintenance of the Je-To Lake, dam, and spillway to be assessed to each freeholder of the conservancy district would cause a financial burden. “I’m trying really, really hard to sell my house to get out of there.”

Tom McCafferty, freeholder, stated, “In as much as I elected to stand down from the active participation in setting this up, I’ll say nothing against going forward with it but I do have some record correcting, I think”. He has lived in the area for more than 50 years. “At no time has [Je-To] Lake dam ever been breached. It has been topped a couple of times.” He acknowledged there have been incidences of emergency flow problems and drainage issues. “The dam itself, the core of the dam, to my knowledge has never ever been breached.... I keep hearing about how the dam has been breached. The dam hasn’t been breached. I’m an engineer, too, by background, but not a civil engineer. I had to do a little bit with a small pond called ‘Gibson Pond’, just eight miles of dike. I think that’s important from the standpoint that for nothing else for people to understand. It doesn’t take anything away from where the work is being done, but the dam itself I know of no time has the dam been breached; therefore the core is good. It is the discharges that are wrong...just so that we don’t get in over our heads from the standpoint of correcting something that doesn’t need to be corrected”. McCafferty said he did not question the need to repair the spillways, but stated “the dam, itself, I think, should stand on its own merits.”

Phyllis Jones, freeholder, stated that she has lived at Je-To Lake for 46 years. She agreed with comments by Tom McCafferty and Majorie Rondinella and indicated she was not opposed to the proposed conservancy district. “There have been things that I thought we could have done in a better way.” Jones noted she sold real estate for 13 years, and said the types of homes at Je-To Lake “most of them, of course, are not on the lake, and I think they would sell just about like any other country home”. She said one residence in Je-To Lake development was on the market for about two years.

Jones said she owns two lots on Je-To Lake, and “we can’t even put a boat in because the silt is so deep. We might get a boat in, but we couldn’t go to the north. We’ve enjoyed the lake, but is the cost too much for the benefits? It’s nice to look out there and see a nice lake, but as far as I can see no one has addressed getting...the silt out of the lake or how to manage the future by paying for that service.” She said the HOA removed silt from Je-To Lake every five years depositing the silt on the north end of Je-To Lake, the back side of the dam, and some of the silt was sold to individuals. “But now the cost is so extremely high, and it’s not going to get any better. What do we do in the future when that silts in again? It’s a small lake, maybe around eight acres and maybe there’s two or three acres of silt on the north end. I’m not for spending \$400,000 or whatever it is on the lake without addressing the silt problem.” She said there are smaller homes in Je-To Lake. “We don’t have very many homes, and the income is not a high income community. Where the money is coming from is a question for me. I don’t like to see anyone hurt because the cost is so high.” She concluded, “I don’t think the whole community of the lake has been able to have enough input in what has been decided..., but I’m not against the conservancy.... If I have to take \$20,000 or \$30,000 loss on my part, I’d rather see that than to have people have to give up their homes because they can’t afford it.”

Richard Frietzsche, freeholder, stated that he has lived in the Je-To Lake residential development for approximately 16 years. He questioned Mary Dugan's knowledge of the lake's structure. "She was used as a witness as to her decision as to whether the dam needs to be rebuilt." He said Je-To Lake water level has been lowered for at least two or three months. "It rained. The water went through the hole that was there. It drained fine, and we didn't have any problem." Frietzsche added. "Right now they have done something to fill in some holes or something, but we don't know what that is because the dam committee meets in private. So now there is water in the lake. I don't know if that was to make us reflect on how the water used to be there or not."

Frietzsche questioned the planned location of forests, wildlife, and recreation areas within the conservancy district. "There's an 8-acre lake there..., but there's no room for wildlife unless it's fish. You know, there's a little bit of maybe 200 feet by 500 feet in front of the lake, and an area down by the dam, which is a drop off. That would be the only place that there's a place for forests and recreation areas". He also questioned granting rights-of-way for construction equipment access. "They have to get permission from the freeholders to access their land to get that silt out." He said previous dredging resulted in the removal of "100 by 100 feet of dirt four feet deep. It was there for two years. Now they are talking about that whole area, a couple acres of dirt. Where are they going to put it? Are we going to have to pay to have it hauled away?"

Frietzsche said his residence is located 300 feet from Je-To Lake with pier access. "I've been down there fishing, and I've seen last year maybe ten people fishing total.... There were three people in a boat last year fishing. It's been down since April. There has been nobody down there on a boat since May, and we have not heard any complaints about that.... It's not a very good recreation area to spend \$500,000 to maintain so five or ten people can go fishing and boating. We are spending all that money and nobody even uses the lake. You can't swim in it. It has far too much silt, dirt, trash, branches.... The lake is a worthless lake. A stream through there was nice...and would be better." Frietzsche said, "We were told that if this was put in, there would be two more taxes added to our personal income, not to our house, not to our real estate. And the people that lived on the lake would be taxed more than the people that didn't live on the lake."

Pat Beary, freeholder, stated that she bought her Je-To Lake residence in 2010. "Our home is 6,000 square feet, and we paid \$245,000 for it. We would not have looked at it, and we certainly would not have bought it without the lake. The amount of money that we paid extra for the lake can't even be determined because we wouldn't have taken it for \$100,000 less. I don't fish, but I enjoy watching the lake, looking at the lake, watching the wildlife on the lake. I think the lake is definitely worth the money it's going to cost to repair it and is a benefit to our whole community, and I think many people enjoy it."

Thomas Beary, freeholder, stated that he was in support of the establishment of the conservancy district.

Linda Frietzsche, freeholder, stated "There are some of us that are on fixed incomes.... We can barely afford the real estate taxes we pay now. We are not young children. We're not in our 20s. Most of us there are in our 50s and 60s or higher. It's just going to be an added burden."

She said she was not against Je-To Lake. "It's nice, but if you can't afford it, you can't afford it. We can't. We'll probably be leaving."

Alan Hux responded to a question regarding ownership of Je-to Lake, and its dam and spillway. He said these areas would be conveyed to the conservancy district to remove them from Hendricks County tax rolls and to give the conservancy district the ability to make the repairs as owner of the facilities and the works of improvement.

## **II. WRITTEN COMMENTS RECEIVED AFTER THE PUBLIC HEARING**

The period in which to file comments remained open through December 16, 2011. On December 13, 2011, Mary Dugan emailed the following comment:

I believe the conservancy is necessary for many reasons, such as; preserving the wildlife areas south of the dam and as a source of food and water of the many deer, foxes, raccoons, and other small animals that depend on the lake. The woods south of the dam are also home to many of these animals as the recreational area on the north side of the lake for picnicking and fishing and to the south of the dam for wilderness walks. I feel that benefits of this far exceed the costs and is necessary as the only way to fund the many projects we need to work on. Without the Conservancy we would have no way to get everyone to pay their fair share.

## **III. GOVERNMENTAL COMMENTS: COUNTY AND STATE**

### Hendricks County, Board of Commissioners

On December 16, 2011, Michael E. Graham, Administrator to Board of County Commissioners, filed the following letter:



**Board of Commissioners**  
**HENDRICKS COUNTY**

**Bob Gentry**  
**Phyllis A. Palmer**  
**Eric L. Wathen**

December 15, 2011

**Hendricks County Government Center**  
**355 South Washington St. #204**  
**Danville, Indiana 46122-1759**

Indiana Natural Resources Commission  
Division of Hearings  
100 N. Senate Ave., Room N501  
Indianapolis, IN 46204-2200

Re: Je-To Conservancy District  
Court Cause Number 32C01-1108-MI-157  
NRC Admin. Cause No. 11-175C

Dear Commissioners:

The residents of Je-To Lake have petitioned to establish a Conservancy District for purposes of maintaining and improving Je-To lake, dam, spillway and the natural areas in the environs of the lake. The Hendricks County Commissioners support the efforts of the residents to establish a Je-To Lake Conservancy District which will provide a governing entity to collect fees for the purpose of improving the lake. We have witnessed the damage caused when a private dam fails and the breached water destroys the surrounding land and infrastructure. Residents of Je-To Lake are commended for their efforts to plan and address the problems associated with their lake prior to having a disaster.

We request that the Je-To Lake Conservancy District be limited to only establishing a special assessment and not be given the authority to establish a tax rate. Because of the property tax caps established in the State of Indiana, the creation of another local taxing unit could take away a portion of the property taxes collected from existing local government units. Local units of government are forced to defend their funding sources due to the current funding constraints. We understand a tax rate set by the Je-To Lake Conservancy District would be outside of the tax caps; however, the Indiana General Assembly could change this exclusion. It is prudent to limit this new Conservancy District to a special assessment.

We support the Je-To residents' efforts to establish a Conservancy District conditioned on limiting their method of raising funds.

Sincerely,

Hendricks County Board of Commissioners

A handwritten signature in black ink, appearing to be "EW", is written over a horizontal line.

Eric L. Wathen, President

\*317) 745-9221 \* FAX (317) 745-9457 \* E-MAIL: [jwyeth@co.hendricks.in.us](mailto:jwyeth@co.hendricks.in.us)

Indiana Department of Natural Resources

On December 27, 2011, Michael W. Neyer, Director of the Department of Natural Resources, Division of Water, filed the following:

**Division of Water  
Memorandum**

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**Date:** December 27, 2011

**To:** Jennifer Kane, Paralegal  
Division of Hearings, Natural Resources Commission

**From:** Michael W. Neyer, P.E.  
Director, Division of Water

**RE:** Establishment of the Je-To Lake Conservancy District

On October 13, 2011, the petition for the establishment of the Je-To Lake Conservancy District was acted upon by the Hendricks Circuit Court. Under Cause Number 32C01-1108-MI-157, this petition was deemed complete as to form and content and referred to the Natural Resources Commission. The petition was forwarded to the Division of Water for review and comment.

The proposed Je-To Lake Conservancy District is located on the Brownsburg Quadrangle Map, Section 33 of Township 16 North, Range 1 East. Documents on file with the Division of Water indicate that this earthen dam is owned by the Je-To Lot Owners Association (Association) and was constructed prior to 1967. The dam is 16.5 feet high with a crest length of 350 feet, and a drainage area of 1.3 square miles. At summer pool the dam impounds approximately 5.6 acres and was historically classified as significant hazard. In March of 1978, this dam failed after undermining of the concrete chute spillway. In 1980 a Construction in a Floodway Permit (M-6135) was issued for repairs to the dam which allowed for refilling after a two-year failure related dewatering of the lake.

The Association recently contracted the services of Banning Engineering to prepare a Preliminary Engineering Report which evaluated alternatives to increase the spillway capacity of the dam. Historically the Indiana Department of Natural Resources (IDNR) classified the dam as a significant hazard structure. This analysis indicates that Je-To Lake Dam may likely be a high hazard dam under IDNR criteria and need to be modified to pass 100% PMP.

According to IC 14-33-2-2, the petition must be signed by 30 % of the freeholders owning land in the proposed district. The proposed Je-To Lake Conservancy District includes 35 freeholders with 20 signatures on the original petition and an additional 5 signatures on the supplemental petition for a total of 25 signatures. The petition requests that the district be established for the purposes of: 1) developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management, 2) operation, maintenance, and improvement of works of improvement, and 3) improving drainage.

As directed by Chapter 2, Section 17 of the Indiana Conservancy Act (IC 14-33), and pursuant to the Public Hearing on December 13, 2011, concerning the proposed establishment of the Je-To Lake Conservancy District in Hendricks County, the Division of Water offers the following comments.

**1) Appears to be necessary**

**a. Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management:**

Testimony at the December 13, 2011 public hearing indicated that this 40+ year old dam has experienced problems in the past, with the most recent overtopping in 2011. The lake, dam, and spillway are currently owned by the Association but several deficiencies have been found in the dam and spillway. Mary Dugan, a resident and Association board member indicated that there have been issues with the dam and spillway such as sinkholes, seepage, and frequent overtopping. Ms. Dugan stated that there were 35 freeholds at Je-To Lake and a total of 25 signatures had been obtained on the petitions submitted for the establishment of a conservancy district. A conservancy district would create an entity that would have the means to conduct repairs and maintain the benefits of having the lake.

Another resident who purchased a home at Je-To Lake in 2010 testified that the lake was definitely one of the main reasons that the home was attractive. Residents indicated that maintenance of the dam and lake would have a positive effect on property values and recreational opportunities.

Carolyn Sabeau is not a freeholder at Je-To Lake but she has been involved in local real estate for over 17 years. She is familiar with the value of lake homes on a professional level and also is a resident at Heritage Lake which is in the Clear Creek Conservancy District. Ms. Sabeau stated that she had researched the effects on property values if Je-To Lake no longer existed. The Je-To Lake Area would experience a \$500,000 loss if the dam is not repaired and the lake was drained. Her testimony indicated that in the current market it would be really difficult to sell property at Je-To Lake without the lake.

Jeff Healy, P.E., Vice President of Banning Engineering testified that his firm had been retained by the Association to conduct an inspection of the Je-To Lake Dam and prepare a Preliminary Engineering Report. According to the report, the dam for Je-To Lake is considered to be significant hazard and according to IDNR guidelines pass 50% of the PMP. Mr. Healy stated that during the investigation it was noted that 3 or 4 homes downstream are at risk of inundation which may change the classification of the Je-To Lake Dam to a High Hazard Dam under IDNR criteria. High Hazard Dams are required to pass 100% of the PMP; the spillway at Je-To Lake currently passes an 18% PMP event. According to Mr. Healy, flood storage in Je-To Lake has also been reduced because of sediment in the lake. Improving drainage along the roads would help control the sediment and what gets into the lake.

Several long time residents testified that they were not convinced that a conservancy district was necessary. Mr. Rick Frietzsche indicated that he saw very few people utilizing the lake for boating or fishing. Because of the sedimentation no one swims in the lake and many residents are unable to put in a boat. He questioned the need to spend nearly \$400,000 on a worthless lake and thought having an unobstructed stream would be better.

Another resident wanted to clarify that this dam had never been breached but has overtopped. Mr. Tom McCafferty indicated that the core of the dam is good but the discharge is bad. He believes the dam is sound and doesn't want to correct a problem that isn't necessary.

A 46-year resident, Ms. Phyllis Jones stated she was not against the establishment of a conservancy district but feels the situation could be handled a better way. Most of the homes are not on the lake and this resident, who was involved in real estate for over 13 years, does not believe that the dam and lake have any bearing on the sale of houses or property values. She indicated that the cost is too much for the benefits and no one has really addressed the issue of silt removal.

Testimony at the December 13, 2011 public hearing was from both experts and resident at Je-To Lake. Some of the attendees expressed concern about being able to afford the assessments and questioned the need for the conservancy district. But an overwhelming majority of the freeholders signed the petition to establish a district in order to have an entity capable of rehabilitating the dam and maintaining the lake.

Should the district not be formed and the dam continues to deteriorate, it may need to be control breached in order to protect downstream property owners. Therefore this purpose appears necessary.

**b. Operation, maintenance and improvement of a work of improvement for water based recreational purposes:**

Appropriate annual maintenance is an integral part of responsible dam ownership. The dam at Je-To Lake has multiple issues and has overtopped on several occasions. The DNR Inspection Report prepared in July 2011 (State Dam # 32-4) indicates that the dam is deficient on the downstream slope, principal spillway, auxiliary spillway, and has problems with sinkholes and seepage in several locations.

A Preliminary Engineering Report prepared by Banning Engineering noted that the spillway capacity was not even adequate for a dam classified as significant hazard. The report as well as testimony provided by Jeff Healy indicated that the dam may actually be high hazard because there are 3 or 4 homes downstream that could be located in the inundation area. Should that be the case, the dam will need to be upgraded to pass the 100% PMP; currently it is only capable of passing an 18% PMP event before overtopping. The establishment of the Je-To Lake Conservancy District will set a mechanism in place to take over ownership of the dam, to borrow funds and collect assessments, to implement the necessary improvements, to provide private inspections, and for long-term annual maintenance of the Je-To Lake Dam.

Several residents indicated that the scenic value of living on a lake was important. Perpetual annual maintenance of the lake, dam, and spillway would allow for continued enjoyment of the recreational opportunities. Another benefit from the rehabilitation of the lake and dam would be stable property values.

The formation of the Je-To Lake Conservancy District for the purpose of operation, maintenance and improvement of a work of improvement appears to be necessary.

**c. Improving Drainage:**

Addressing drainage and storm water is an important element in a lake community. Testimony at the December 13, 2011 public hearing indicated that silt in Je-To Lake was definitely an issue. Fishing and boating are difficult because the lake has not been dredged for several years. Improvements to

drainage areas along the roads would help control sediment and what eventually ends up in the lake. The health of the lake would improve and the recreational opportunities would be restored if sedimentation issues are addressed.

It appears that the purpose of improving drainage is necessary.

## 2) **Holds promise of economic and engineering feasibility**

Je-To Lake is a 5.6 acre lake with a residential development surrounding it. The dam was constructed before 1967 and has a history of failing and overtopping. There are 35 freeholds included within the boundaries of the proposed conservancy district and 25 signatures were obtained on the petition in favor of creating a district. Several residents who live at Je-To Lake spoke at the December 13, 2011 public hearing in support of the conservancy district. The common theme was the aesthetic value of the lake is what attracted them to purchase their homes. They felt that rehabilitation of the dam and maintenance of the lake would be beneficial to the entire community. Establishment of a conservancy district would provide a mechanism for the property owners at Je-To Lake to upgrade the dam and provide for maintenance into the future.

Carolyn Sabean has worked in real estate for 17 years and she has experience selling lake property. Her testimony at the public hearing indicated that if the dam was not repaired and lake did not exist, the area would experience a loss of \$500,000. She indicated that selling a home in this area without the lake would be difficult.

Professional engineer Jeff Healy from Banning Engineering inspected the dam and spillway. The findings were put into a Preliminary Engineering Report along with the evaluation of two (2) alternatives. Testimony at the public hearing indicates that the dam has historically been classified as significant hazard but the realization that 3 or 4 homes located downstream and perhaps within the inundation area could change the classification to high hazard.

The Report recommends proceeding with Alternative #1 which includes: replacing the existing pipe with twin 48-inch spillway pipes, raising the crest of the dam to an elevation of 828.0 feet, expand the current concrete topped, riprap spillway, and excavate an additional 75-foot wide earth-lined spillway on the east end of the dam. The total project cost for this alternative is \$300,300. Mr. Healy stated that rehabilitation of the dam and spillway would hold economic and engineering feasibility.

A few residents who attended the December 13, 2011 public hearing expressed concern that the issue with silt was not being addressed. It was noted that the homes surrounding Je-To Lake are modest and many of the residents are struggling financially. Some attendees were not sure where the money will come from to make the repairs to the dam and don't want to see people lose their homes because they cannot afford these additional costs.

It is anticipated that the creation of a conservancy district for maintenance, repair, and operation of the works of improvement will have a positive effect on property values while providing recreational opportunities to the freeholders of the proposed District.

The petition indicates that costs will most likely be paid for by the annual levy of both special benefits tax and an annual assessment on land found to be exceptionally benefited.

The Hendricks County Board of Commissioners submitted a letter to the NRC on December 15, 2011. Because the Commissioners have witnessed the damage caused when a private dam fails and the released water destroys surrounding land and infrastructure, their letter indicates that they support

the efforts of the residents to establish the Je-To Lake Conservancy District in order to collect fees for the purpose of improving the lake. The letter further requests that the *District be limited to only utilizing a special assessment and not be given the authority establish a tax rate*. Concern was expressed that because property tax caps established in Indiana, the creation of another local taxing unit could take away a portion of the property taxes collected from existing local government units. The letter indicated that many times local units of government are forced to defend their funding sources due to the current funding constrains.

Testimony indicated that if the conservancy district is established they would work with a Hendricks County financial institution for short term funding. Depending on the alternative chosen each freeholder could be expected to pay as much as \$12,500 for the rehabilitation of the dam.

No documentation was presented at the public hearing that indicated the costs of annual operation and maintenance of the dam. The attorney for the petitioners stated later that these annual expenses would range between \$3000 and \$5000 at the current hazard classification.

There was limited testimony on expenses. Freeholders must understand that once the rehabilitation of the dam is complete, perpetual maintenance of the structure is critical. Since it is likely the dam will be re-classified as high hazard, additional operation and maintenance costs should be expected.

The Je-To Lake Conservancy District shall establish a Cumulative Maintenance Fund as set forth in the Indiana Conservancy Act, IC 14-33-14.

Testimony provided at the December 13, 2011 public hearing was provided by both experts and residents of Je-To Lake. It appears that the proposed Je-To Lake Conservancy District holds promise of economic and engineering feasibility.

### **3) Seems to offer benefits in excess of costs**

At the December 13, 2011 public hearing, Carol Sabean a local real estate agent provided testimony regarding the loss of property value resulting from the elimination of Je-To Lake. After research, Ms. Sabean indicated that the area would lose approximately \$500,000 if the dam was not repaired. When asked, she indicated that the benefits would be in excess of costs.

Jeff Healy of Banning Engineering testified at the public hearing that a Preliminary Engineering Report had been prepared and two (2) alternatives were evaluated to increase the spillway capacity. The recommendation which would raise the dam to pass 100% of the PMP with a total project cost of \$300,300.

If the district was not formed and the needed repairs were not made, the dam would continue to deteriorate and may need to be control breached to protect downstream property owners. This action would lead to decreased property values and decreased recreational benefits.

The Preliminary Engineering Report and testimony at the public hearing did not provide specificity as to what would be proposed to reduce future sediment from entering the lake. Also no cost estimates were given to remove the existing sediment.

Based on testimony heard at the public hearing on December 13, 2011, the benefits are expected to exceed the costs associated with making needed improvement to the Je-To Lake Dam and providing for long term maintenance of the structure.

**4) Proposes to cover and serve a proper area**

Chapter 3 of the Indiana Conservancy Act states that "any area may be established as a district if each part of the district is contiguous to another part". The boundaries of the proposed Je-To Lake Conservancy District are contiguous.

The proposed boundaries encompass the area around Je-To Lake which is a residential subdivision located in Hendricks County; specifically Section 33, Township 16 North, Range 1 East. The conservancy district will include only the property owners who will benefit from the establishment of the District.

As proposed the Je-To Lake Conservancy District boundaries appear to cover and serve a proper area.

**5) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects**

West Central Conservancy District is also located in Hendricks County and though the boundaries of the West Central Conservancy District are near those of the proposed district, there is no overlap of boundaries. The proposed Je-To Lake Conservancy District could be established and operated in a manner compatible with other districts. The proposed district does not appear to interfere with any other known flood control or water management areas.

## **IV. RECOMMENDED FINDINGS**

As the statutory responsibilities of the Commission are applied to the proposed Je-To Lake Conservancy District, the Commission shall make a determination under Ind. Code § 14-33-2-17 and report to the Hendricks Circuit Court whether the proposed district, for the three purposes meets the following conditions:

- (1) Whether the proposed district appears to be necessary;
- (2) Whether the proposed district holds promise of economic and engineering feasibility;
- (3) Whether the proposed district seems to offer benefits in excess of costs and damages;
- (4) Whether the proposed district proposes to cover and serve a proper area; and
- (5) Whether the proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Within this statutory structure, the following findings are recommended to the Hendricks Circuit Court with respect to the Petition for the creation of the Je-To Lake Conservancy District:

**PURPOSE:** Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management

### **The proposed district appears to be necessary**

Je-To Lake is located in an unincorporated area south of County Road 200N near Avon, Hendricks County. The Je-To Lake and dam were constructed without permit prior to 1967 and is within the Je-To Lake residential development. Currently, the residential development is managed by the Je-To Lake Association, Incorporated (the “HOA”), a nonprofit domestic corporation created on August 4, 1970: “to promote the common good and general welfare of the members of the Association by maintaining and improving the lake, roads, and land areas which serve the membership”.<sup>4</sup> Evidence presented indicates that Je-To Lake is used for swimming, boating, fishing, and wildlife viewing, although recreational use was more frequent in past years.

The Je-To Lake dam (State ID #32-4) is 16.5 feet high with a crest length of 350 feet, and impounds, at summer pool, approximately 5.6 acres.<sup>5</sup> The Department of Natural Resources (the “Department”) currently rates the dam as a significant hazard dam. Banning Engineering conducted a breach model analysis of the Je-To Lake dam, which showed Je-To Lake dam may actually be a high hazard dam.<sup>6</sup> A high hazard dam is a structure the failure of which may cause the loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads.<sup>7</sup> There are three to four homes located downstream of the Je-To Lake dam that are potentially at risk in the event the dam was breached.<sup>8</sup>

Under Ind. Code §14-27-7.5-12, the Department has authority to conduct a controlled breach and ultimate elimination of any unsafe dam if proper maintenance and necessary improvements are not carried out. A breach and elimination of the Je-To Lake dam would result in the loss of the Je-To Lake and the recreational opportunities it provides. If established, the Je-To Lake Conservancy District would manage and maintain the Je-To Lake, dam, spillways, and recreational areas. This approach would help protect the integrity of the water management infrastructure. The HOA does not have the funding or expertise required to properly manage and maintain the Je-To Lake dam for developing forests, wildlife areas, parks and recreational facilities in connection with beneficial water management. The proposed district appears to be necessary.

### **Whether the proposed district holds promise of economic and engineering feasibility**

The proposed Je-To Lake Conservancy District would benefit 35 freeholders within the proposed district and the surrounding community by appropriate dam maintenance. The dam was constructed before 1967 and evidence has been presented that the dam has a history of

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<sup>4</sup> Articles of Amendments of the Articles of Incorporation of Je-To Lake Association, Incorporated, approved by and filed with the Indiana Secretary of State on September 24, 1971; p. 2.

<sup>5</sup> Department Memorandum, p. 10 of this report.

<sup>6</sup> Petitioners’ Exhibit B, Preliminary Engineering Report, p. 2.

<sup>7</sup> Indiana Dam Safety Inspection Manual, 2007, §1.6; p. 9 (<http://www.in.gov/dnr/water/3593.htm>).

<sup>8</sup> Testimony of Healy, p. 5 of this report.

overtopping. As dams age, they tend to lose their strength through material deterioration, making them more susceptible to dam failure.<sup>9</sup>

In early December 2011, Banning Engineering inspected the Je-To Lake dam and found the dam and spillways to be deficient. Banning Engineering reviewed alternative analyses for the repair of Je-To Lake dam and spillways, but included two alternatives in its report. Banning Engineering recommended dam repair plan, Alternative #1, and indicated that this alternative has “a reasonable chance of success” and could be “reasonably constructed”.<sup>10</sup>

In general, a high hazard dam must be designed to safely pass 100% of the probable maximum precipitation (PMP) storm event, and a significant or low hazard dam should safely pass 50% of the PMP storm event. A PMP storm is a very large event, typically resulting in accumulated rainfall of 25 inches or more in small watersheds in Indiana.

Indiana Dam Safety Inspection Manual, 2007, §1.6, p. 9.

The total estimated costs to repair the dam and to bring the dam into regulatory compliance as a “high hazard dam” is approximately \$300,317.<sup>11</sup> Testimony presented indicated that the loss of Je-To Lake would have an economic impact of approximately \$500,000.<sup>12</sup>

Dam improvements would help assure stability and integrity as well as help to preserve the recreational values of Je-To Lake. The maintenance responsibilities of the HOA would be shifted to the proposed Je-To Lake Conservancy District, including dam improvement, maintenance, and sediment removal. The Department found these responsibilities are “appropriate lake management activities to be continued by the proposed conservancy district.”<sup>13</sup>

The proposed Je-To Lake Conservancy District may supplement its budget for the maintenance repair and operation of the works of improvements necessary for developing forests, wildlife, parks and recreational facilities in connection with beneficial water management through both annual levy of special benefit taxes and an annual assessment on land found to be exceptionally benefitted. The proposed conservancy district as a quasi-governmental entity affords the mechanism for operation, maintenance, and improvements of the Je-To Lake dam including funds management. The proposed district holds promise of economic and engineering feasibility for the purpose of developing recreational facilities in connection with beneficial water management.

### **Whether the proposed district seems to offer benefits in excess of costs and damages.**

The Department has historically classified the Je-To Lake dam as a “significant hazard”. High Hazard Dams are required to pass 100% of the PMP; the spillway at Je-To Lake currently passes an 18% PMP event. Dams are commonly used to provide recreational resources and can enhance property

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<sup>9</sup> Indiana Dam Safety Inspection Manual, 2007, §5.1, p. 1.

<sup>10</sup> Testimony of Healy, p. 5 of this report.

<sup>11</sup> Petitioners’ Exhibit B, Preliminary Engineering Report, Appendix G.

<sup>12</sup> Testimony of Sabeau, p. 4 of this report.

<sup>13</sup> Natural Resources Commission Report, *In re Petition for Creation of the Hants Lake Conservancy District*, 41C01-0312-MI-00018 (2004), p. 6.

values, but they must be properly maintained to realize their potential.<sup>14</sup> Dam failures are usually the result of improper design or construction, or poor maintenance.<sup>15</sup> The dam owner loses a valuable asset and faces reconstruction costs and possible liability for downstream damages.<sup>16</sup>

The loss of Je-To Lake would lead to decreased property values and decreased recreational opportunities. The benefits gained from developing recreational facilities in connection with beneficial water management in relation to costs and damages are partly intrinsic in nature and may be partly impossible to quantify. To summarize, there is a potential for \$500,000 loss of property value and recreational opportunity that may be incurred through the loss of Je-To Lake, and the costs for improvements of the dam and recreational facilities are estimated at \$300,317. The value of a lake to a community is partly subjective. Testimony from some residents regarding Je-To Lake's value spans a wide spectrum as being "worthless" to "can't even be determined".<sup>17</sup>

Evidence was not presented regarding the annual costs to maintain Je-To Lake, its dam and spillways. Dam owners should be financially prepared to perform necessary dam inspections, maintenance, and repairs. The benefits of dam improvement and continued maintenance of the dam and other recreational amenities exceeds all consequential costs of dam failure. The proposed district seems to offer benefits in excess of costs and damages.

#### **Whether the proposed district proposes to cover and serve a proper area**

Any area may be established as a district if each part of the district is contiguous to another part. The territory to be included in the Je-To Lake Conservancy District will include Je-To Lake, the dam, spillways, and appurtenances, all real property within the Je-To Lake residential development. The area within the proposed district boundaries, and as depicted in the proposed conservancy district boundary map as filed with the Hendricks Circuit Court, NRC-Hearings' Exhibit 1, and attached to this report, appears to be contiguous.

#### **Whether the proposed district could be established and operated in a manner compatible with established: conservancy districts; flood control projects; reservoirs; lakes; drains; levees; and other water management or water supply projects**

Evidence presented by the Petitioners as well as state agency comments filed during this proceeding establish there does not exist, near the proposed district boundaries, a water management or a water supply project with which the Je-To Lake Conservancy District would interfere.

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<sup>14</sup> Indiana Dam Safety Inspection Manual, 2007, § 1.1, Figure 1-1, p. 1-1; <http://www.in.gov/dnr/water/3593.htm>.

<sup>15</sup> *Id.*, § 5.1, p. 5.

<sup>16</sup> *Id.*, § 1.4.2, p. 1-5.

<sup>17</sup> Testimony of Fritzsche, R., and Beary, p. 7 of this report.

**PURPOSE:**    Operation, maintenance, and improvement of a work of improvement for water based recreational purposes

### **The proposed district appears to be necessary**

The Je-To Lake community is a residential development located in unincorporated, Hendricks County, Indiana, and adjacent to Je-To Lake. Je-To Lake, the dam and spillways are within the residential development and owned and managed by the HOA. The Je-To Lake dam has a history of failures. The July 2011 Department Inspection Report indicates that the dam is deficient on the downstream slope, principal spillway, auxiliary spillway, and has problems with sinkholes and seepage in several locations.<sup>18</sup> Testimony presented indicates that overtopping of the dam occurred in 2008, 2010, and 2011.

On December 15, 2011, the Department was notified by the HOA and Banning Engineering regarding development of a sinkhole on the downstream slope over the deteriorated principal pipe. On the same day the Department found Je-To Lake dam to be in a state of progressive failure and provided a mitigation plan.<sup>19</sup> The drainage area above the Je-To Lake dam is approximately 804 acres or 1.26 square miles. The Department has authority to regulate Je-To Lake dam.<sup>20</sup>

Appropriate maintenance is an integral part of responsible dam ownership.<sup>21</sup> Dams require an on-going inspection and maintenance program to insure their continued safety and useful life.<sup>22</sup> The HOA does not have a management structure in place to facilitate the assumption of these maintenance responsibilities. The proposed district appears to be necessary for the purpose of operation, maintenance and improvement of works of improvement, including Je-To Lake and the Je-To Lake dam and spillways.

### **Whether the proposed district holds promise of economic and engineering feasibility**

To repair Je-To Lake Dam and bring the dam into regulatory compliance, the following is recommended:

#### **ALTERNATIVE #1 (raise dam to 100% PMP elevation)**

This alternative addresses the lack of spillway capacity by replacing the primary spillway pipe with twin 48-in pipes with a drop inlet. The current concrete topped, rock riprap spillway will be expanded and an additional, 75-foot wide earth-lined spillway will be excavated on the east end of the dam.

The top of dam will be raised from its current low point of 823.4 to a settled top of approximately 828, which will require the placement of 4–4 ½ feet of compacted fill on the top and downstream slope of the embankment.

A 100-year frequency, 24-hour duration storm will pass through the principal pipe drop spillway. The 100-year frequency, 24-hour duration storm does not flow through either

<sup>18</sup> Department Memorandum, p. 12 of this report.

<sup>19</sup> NRC Hearings Exhibit 2, pp. 26-27.

<sup>20</sup> Ind. Code §14-27-7.5-1; Ind. Code § 14-27-7.5-9.

<sup>21</sup> Department Memorandum, p. 12 of this report.

<sup>22</sup> Indiana Dam Safety Inspection Manual, §1.1, p. 1-1.

auxiliary spillway and does not overtop the embankment. The 100-year storm event is close to a 25% PMP event. The larger, less frequent storm events will pass through the rock and then earth-lined spillways but do not overtop the embankment of the dam.

The preliminary constructions cost estimate for this alternative is \$241,000 with a preliminary total project cost of \$300,300.

Preliminary Engineering Report, p. 3.

To address the progressive failure of Je-To Lake dam, on December 20, 2011 the Department approved Banning Engineering's recommendation, which follows, in part:

#### **ALTERNATIVE ANALYSIS**

The dam has developed a progressive failure condition because of corrosion of the corrugated metal pipe spillway and subsequent erosion of a portion of the downstream embankment earth materials.

IDNR has concurred in a scenario to temporary breach the dam with an open cut channel through the embankment, in expectation of a rehabilitation project that could take place in 2012 following formation of a conservancy district.

We analyzed the rainfall runoff relationships for the contributing drainage area and concluded that the uncontrolled inflow to the lake ranges between 180 cfs – 370 cfs for a 2-year, 24-hour, NRCS Type II – 10-year, 24-hour, Type II storm event, respectively. We think that a design discharge for a breach cut of approximately 220 cfs will result in a reasonable degree of protection for the open cut breach channel that is proposed.

#### **RECOMMENDATION**

We recommend proceeding with an open cut breach channel, using a trapezoid cross section. The channel cross section is recommended to be 12 feet wide, with 2:1 cut slopes and rock riprap lining up to a flow depth of a least 2 feet deep. The proposed channel would extend from the reservoir to the outlet channel and generally follow the existing pipe spillway.

The existing pipe drop spillway would be removed as part of this project. The project extent is approximately the same size excavation that will be required to install the new pipe spillways that were proposed in the Preliminary Engineering Report by Banning Engineering, dated December 2011.

Breach Cut Recommendation for Je-To Lake Dam, December 2011.

Banning Engineering estimates the construction costs for the breach channel project to be \$30,569.

A dam safety inspection performed on a regular basis is one of the most economical means a dam owner can use to assure the safety and long life of a dam and its immediate environment.<sup>23</sup> The use a conservancy district is a proven mechanism for managing the operation, maintenance, and improvement of lakes and dams. The proposed conservancy district holds promise of economic and engineering feasibility for maintaining the works of improvement of a work of improvement for water based recreational purposes.

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<sup>23</sup> Indiana Dam Safety Inspection Manual, §2.1, p. 2-3.

### **Whether the proposed district seems to offer benefits in excess of costs and damages**

The owner of a dam shall maintain and keep the structure in the state of repair and operating condition by the exercising of prudence; having due regard for life and property; and apply sound and accepted technical principles. Ind. Code § IC 14-27-7.5-7(a). The estimated cost to bring Je-To Lake dam into regulatory compliance and to rectify the progressive failure is approximately \$350,000. Testimony indicates that there would be an estimated economic impact of \$500,000 with the loss of Je-to Lake. Healy testified that the community would experience a significant economic loss with the loss of the recreation component.<sup>24</sup>

The Petition indicates that the costs and damages for reconstruction, repair, maintenance and improvement of the Je-To Lake dam and spillways will be paid solely by the proposed conservancy district. The Hendricks County Commissioners requested that the Je-To Lake Conservancy District “be limited to only establishing a special assessment and not be given the authority to establish a tax rate.... We understand a tax rate set by the Je-To Lake Conservancy District would be outside of the tax caps; however, the Indiana General Assembly could change this exclusion. It is prudent to limit this new Conservancy District to a special assessment. We support the Je-to residents’ efforts to establish a Conservancy District conditioned on limiting their method of raising funds.”<sup>25</sup>

The Indiana General Assembly enacted the Conservancy District Act that is codified at Ind. Code § 14-33. By statute, a conservancy district may levy special benefit taxes to cover: (1) expenses of establishing the district; (2) general preliminary and administrative expenses; (3) expenses of preparing the district plan; (4) expenses of putting the district plan into operation by constructing the necessary works; and (5) expenses of operating and maintaining the district. Ind. Code § IC 14-33-7-1. A conservancy district may also pay its expenses and obligations from the collection of assessments from land that receives exceptional benefits from the operation of the district plan and the collection of assessments for maintenance and operation of the works of improvement. Ind. Code § 14-33-7-5(4). The conservancy district is urged to consider carefully the request by the Hendricks County Commissioners. But the Commission’s role in evaluating a proposed conservancy district is set by Ind. Code § 14-33-2-17, and this authority does not extend to either supporting or rejecting the Hendricks County Commissioners’ request.

### **Whether the proposed district proposes to cover and serve a proper area**

Any area may be established as a district if each part of the district is contiguous to another part. The territory to be included in the Je-To Lake Conservancy District will include Je-To Lake, the dam, spillways, and appurtenances, all real property within the Je-To Lake residential development. The area within the proposed district boundaries, and as depicted in the proposed conservancy district boundary map as filed with the Hendricks Circuit Court, NRC-Hearings’ Exhibit 1, and attached to this report, appears to be contiguous.

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<sup>24</sup> Testimony of Healy, p. 5 of this report.

<sup>25</sup> Board of Commissioners, Hendricks County, letter, p. 9 of this report.

The area within the proposed district boundaries, and as depicted in the proposed conservancy district boundary map, NRC-Hearings' Exhibit 1, attached to this report, appears to be contiguous.

**Whether the proposed district could be established and operated in a manner compatible with established: conservancy districts; flood control projects; reservoirs; lakes; drains; levees; and other water management or water supply projects**

Evidence presented by the Petitioners as well as state agency comments filed during this proceeding establish there does not exist, near the proposed district boundaries, a water management or a water supply project with which the Je-To Lake Conservancy District would interfere.

**PURPOSE: Improving Drainage**

**The proposed district appears to be necessary**

Je-To Lake dam was constructed prior to 1967. Testimony indicates that the HOA has periodically removed sediment from Je-To Lake. Testimony also indicates that the HOA is aware that additional sediment removal is warranted, and improvement of drainage to Je-To Lake is necessary to alleviate continued siltation.<sup>26</sup> The sediment deposit in Je-To Lake has reduced the water storage capacity when floodwaters are in the upstream area.<sup>27</sup> Testimony was presented that indicates the increased sedimentation has decreased the recreational use of Je-To Lake.<sup>28</sup> Improving drainage along the residential roads would have a positive impact by decreasing additional sedimentation.<sup>29</sup>

Evidence was not presented regarding the methods to improve the drainage within the conservancy district; however, storm water control is an important element in any land management plan. Addressing drainage and storm water is an important element in a lake community.<sup>30</sup> The proposed district appears to be necessary for the purpose of improving drainage.

**Whether the proposed district holds promise of economic and engineering feasibility**

The implementation of controlled drainage is a component of best management practices regarding property management. Evidence was not presented, however, regarding the cost or methods to be implemented for sediment removal or drainage improvement. It cannot be determined whether the proposed district holds promise of economic and engineering feasibility for the purpose of improving drainage.

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<sup>26</sup> Testimony of Dugan, p. 3 of this report.

<sup>27</sup> Testimony of Healy, p. 5 of this report.

<sup>28</sup> Testimony of: Jones (p. 6), Frieztzsche, R. (p. 7); of this report.

<sup>29</sup> Testimony of Healy, p. 5 of this report.

<sup>30</sup> Department Memorandum, p. 12 of this report.

**Whether the proposed district seems to offer benefits in excess of costs and damages**

The removal of sedimentation from Je-To Lake will increase floodwater storage capacity, and will increase the recreational opportunities. The benefits gained from improving recreational facilities in relation to costs and damages are partly intrinsic and may be partly impossible to quantify. Evidence was not presented regarding the costs associated with improving drainage within the proposed conservancy district or costs of sediment removal from Je-To Lake. It cannot be determined whether the proposed district seems to offer benefits in excess of costs and damages for the purpose of improving drainage.

**Whether the proposed district proposes to cover and serve a proper area**

Any area may be established as a district if each part of the district is contiguous to another part. The territory to be included in the Je-To Lake Conservancy District will include Je-To Lake, the dam, spillways, and appurtenances, all real property within the Je-To Lake residential development. The area within the proposed district boundaries, and as depicted in the proposed conservancy district boundary map as filed with the Hendricks Circuit Court, NRC-Hearings' Exhibit 1, and attached to this report, appears to be contiguous.

**Whether the proposed district could be established and operated in a manner compatible with established: conservancy districts; flood control projects; reservoirs; lakes; drains; levees; and other water management or water supply projects**

Evidence presented by the Petitioners as well as state agency comments filed during this proceeding establish there does not exist, near the proposed district boundaries, a water management or a water supply project with which the Je-To Lake Conservancy District would interfere.

Dated: December 29, 2011

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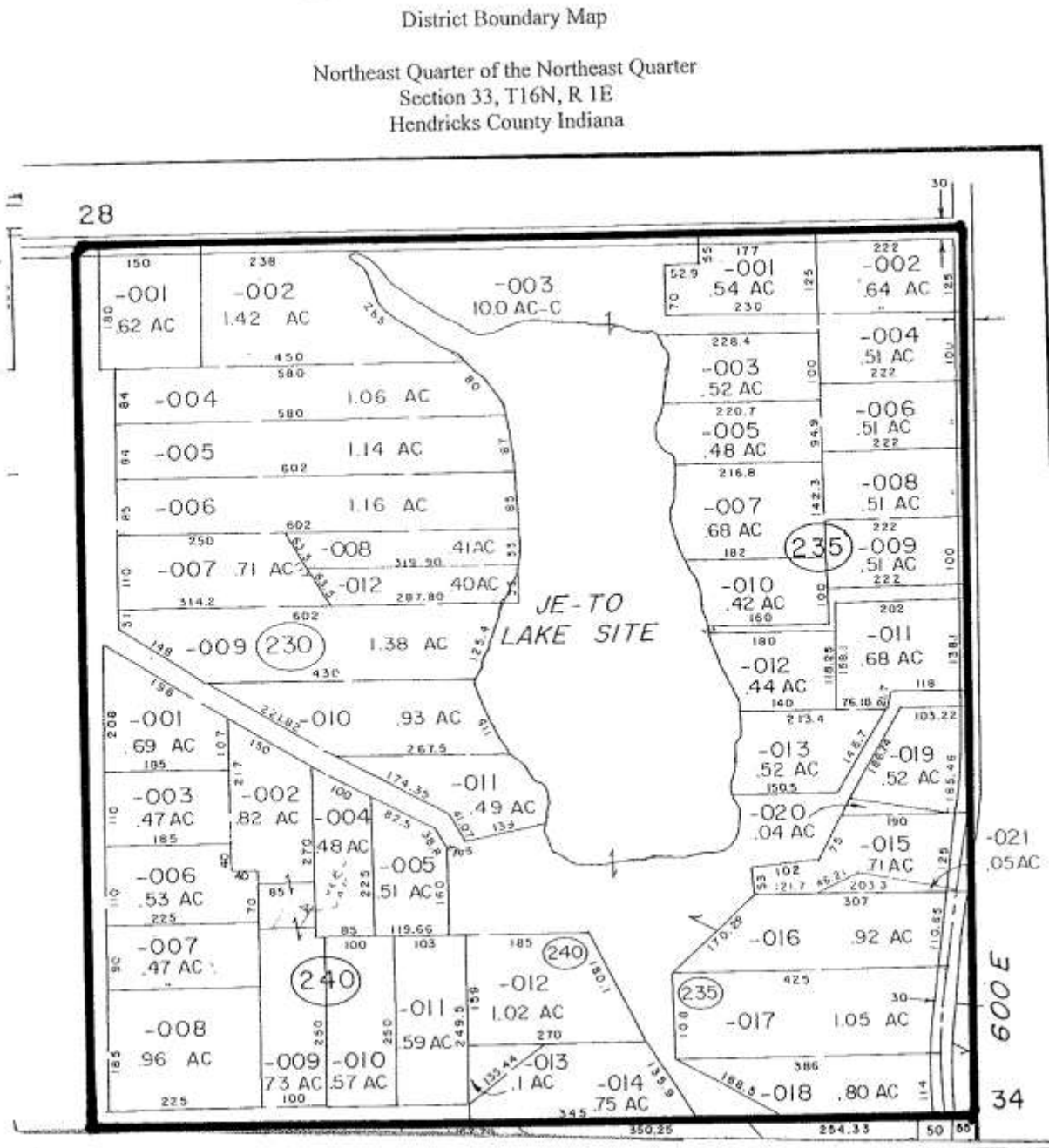
Jennifer M. Kane, Hearing Officer  
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A copy of the foregoing was sent to the following:

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(Sent via [ahux@taftlaw.com](mailto:ahux@taftlaw.com))

Cc: Terri Price, DNR ([tprice@dnr.in.gov](mailto:tprice@dnr.in.gov))

NRC-HEARINGS' EXHIBIT 1



NRC-HEARINGS' EXHIBIT 2



Mitchell E. Daniels, Jr., Governor  
Rob Carter, Director  
Division of Water  
402 W. Washington Street  
Room W264  
Indianapolis, IN 46204  
Phone (317) 232-4160  
Toll-free (877) 928-3755  
Fax (317) 233-4579

December 16, 2011

To: Je-To Lake Association  
Attn: Mary Dugan  
1775 Je-To Lake Drive  
Avon, Indiana 46123

Certified Mail # 7007 2680 0000 6707 9922

Re: Je-To Lake Dam, State ID 32-4  
Location: Section 33, T16N, R1E  
Washington Twp, Hendricks County

Dear Ms. Dugan:

On December 15, 2011, Je-To Lake Dam was found to be in a state of progressive failure. The structure's principal spillway has apparently deteriorated to the point that water is exiting the side of the pipe and the flowing water is eroding the earthen material of the embankment's downstream slope. If left unaddressed this situation will likely progress and a breach failure of the dam may result in the uncontrolled release of all retained water into the downstream residential area.

State statute requires that the owner of a dam and its appurtenant works maintain and keep the structure in a state of repair and operating condition as is required by (1) the exercise of prudence, (2) Due regard for life and property, (3) The application of sound and accepted technical principles. IC 14-27.5-7. In its current condition Je-To Lake dam is both unsafe and dangerous to life and property, and the dam's owner is no longer in compliance with this statute.

It is our immediate goal, and we believe also your goal, to reduce any potential risk to downstream properties. We would like to quickly reach an agreement on your plan to conduct a controlled dewatering of the dam, completely control breach, and stabilize the remaining structure, until such future time as a rehabilitation project can be designed, permitted and constructed.

To mitigation this situation:

- 1) Je-To Lake Association and/or their authorized representatives shall within 24 hours of receipt of this notice, establish an ongoing monitoring and response procedure coordinated with Hendricks County Emergency Management, to observe the dam, make timely and routine status update reports to the County and State emergency management officials, notify and then update all downstream persons (who are located within the inundation area should an uncontrolled full breach of the dam occur).
- 2) Je-To Lake Association and/or their authorized representatives shall by close of business on Monday December 19, 2011, retain the services of a professional engineer experienced in dam safety, in order to develop a proposed plan to conduct a controlled dewatering of the dam, completely control breach, and stabilize the remaining structure, until such future time as a rehabilitation project can be designed, permitted and constructed.

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December 16, 2011  
Letter To: Je-To Lake Association  
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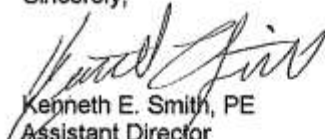
- 3) Je-To Lake Association and/or their authorized representatives shall no later than the close of business on December 28, 2011, have their professional engineer experienced in dam safety, coordinate with DNR and all other appropriate agencies their proposed plan to conduct a controlled dewatering of the dam, completely control breach, and stabilize the remaining structure, until such future time as a rehabilitation project can be designed, permitted and constructed.
- 4) Je-To Lake Association and/or their authorized representatives shall no later than the close of business on January 4, 2012, have their professional engineer experienced in dam safety, and their construction company begin to implement the plan to conduct a controlled dewatering of the dam, completely control breach, and stabilize the remaining structure, until such future time as a rehabilitation project can be designed, permitted and constructed.
- 5) Je-To Lake Association and/or their authorized representatives shall complete item #4 within 30 days of the commencement of the work.

Please understand that should site conditions begin to substantially deteriorate from those currently observed, all items described above may need to be conducted even faster than outlined in this letter.

Please have your professional engineer experienced in dam safety, provide written confirmation to our office that they have been retained to perform the above described services, by close of business on Monday December 19, 2011.

If you have any questions, please contact me through the toll free number listed above or by direct line at (317) 232-4224.

Sincerely,



Kenneth E. Smith, PE  
Assistant Director  
Division of Water

PC: DHS  
Hendricks County EMA  
Conservation Officer Wells  
Banning Engineering  
Terri Price  
Jennifer Kane